



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT  
100 W. OGLETHORPE AVENUE  
SAVANNAH, GEORGIA 31401-3604

SAS-RD-C

8 January 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime  
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322  
(2023),<sup>1</sup> SAS-2013-00561 (MFR 1 of 1)<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

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<sup>1</sup> While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2013-00561

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

## 1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name of Aquatic Resource (listed from south to north within the review area)	JD or Non-JD	Section 404/Section 10
D3	Non-JD	N/A
W220	Non-JD	N/A
W221	Non-JD	N/A
W67	Non-JD	N/A
W225	Non-JD	N/A
W216	Non-JD	N/A
W215	Non-JD	N/A
W213	Non-JD	N/A
W210	Non-JD	N/A
W209	Non-JD	N/A
D2	Non-JD	N/A
W211	Non-JD	N/A
D1	Non-JD	N/A
W207	Non-JD	N/A
UBP4	Non-JD	N/A
UBP3	Non-JD	N/A

## 2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651 (2023)

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2013-00561

3. REVIEW AREA.

- a. Project Are Size (in acres): 3,388.4
- b. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 31.551963 Longitude: -81.944087
- c. Nearest City or Town: Jesup
- d. County: Wayne
- e. State: Georgia
- f. Other associated Jurisdictional Determinations

Regulatory File No.	Type	Outcome
SAS-2017-00139 Authorized October 11, 2017	AJD	This AJD abuts the current review area to the northwest but is not within the current review area. The wetland delineation lines that abut the current review area are aligned with the currently proposed wetland delineations.
SAS-2013-00561 Authorized October 26, 2015	AJD	This AJD abuts the current review area along the western boundary but is not within the current review area. The wetland delineation lines that abut the current review area are aligned with the currently proposed wetland delineations.

- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A. All aquatic resources under review in the AJD are non-jurisdictional.
- 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS N/A. All aquatic resources under review in the AJD are non-jurisdictional.
- 6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>7</sup> N/A

<sup>6</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as “navigable in law” even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>7</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A
- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").<sup>8</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A.
- b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

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<sup>8</sup> 51 FR 41217, November 13, 1986.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Name of excluded feature (listed from south to north across the review area)	Size (in acres and linear feet)	Type of resource generally not jurisdictional
D3	198.24 LF	D3 is a roadside ditch that was dug in uplands. As observed on the Corps site visit on October 23, 2024, this ditch shows evidence of flow only during heavy rain events. This evidence includes minor leaf litter wracking and a narrow, cleared path in the middle of the ditch where water had flown. However, there was no evidence of sustained flow including shelving or channeling consistent with an ordinary high water mark. Additionally, this ditch did not exhibit the three wetland characteristics. D3 is acting as a non-RPW ditch that experiences flow during heavy rain event. Due to the ditch not exhibiting an OHWM or the three wetland characteristics the ditch is not considered an aquatic resource and is not subject to jurisdictional determination. The ditch is included on the mapping and in this MFR for informational context.
W220	3.67	This wetland is surrounded by uplands on all sides. Based on LIDAR and NWI, the wetland continues for approximately 40 feet to the west of the review area but does not connect to a continuous surface connection or aquatic feature outside of the

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2013-00561

		review area. As observed on the Corps site visit on October 23, 2024, there is an RPW ditch approximately 85 ft to the east (not included within the review area of this AJD) and a wetland approximately 100 ft to the north. there was no evidence of a subsurface or surface connection between W220 and these aquatic resources or any other requisite water because of uplands between the features. As a result, W220 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W221	0.44	This wetland is surrounded by uplands on all sides. Based on the agent's delineation, this wetland is approximately 260 ft away from the nearest wetland, ditch, or stream. As a result, W221 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W67	1.81	This wetland is surrounded by uplands on all sides. Based on LIDAR and NWI, the wetland continues for approximately 300 feet to the west of the review area but does not connect to a continuous surface connection or aquatic feature outside of the review area. According to the agent's delineation, there is a wetland approximately 350 ft to the north. As observed on the Corps site visit on October 23, 2024, this wetland was surrounded by uplands within the review area and there was no evidence of a subsurface or surface connection between W67 and any other wetland or requisite water. As a result, W67 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W225	0.37	This wetland is surrounded by uplands and 20-ft wide roads on all sides. There is an approximate 30-ft upland buffer between W225 and the adjacent road. The nearest wetland to W225 is approximately 60 ft to the west. Based on historic aerial imagery and onsite conditions observed on October 23, 2024, there is no evidence of subsurface or surface connection between W225 and any other wetland or requisite water. As a result, W225 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W216	0.70	This wetland is surrounded by uplands on all sides. There is a 20-ft wide road to the southwest with another wetland west of that road. However, there is a 20-30-ft buffer of uplands between W216 and the road. As observed on the Corps site visit on October 23, 2024, W216 does not connect to the roadside ditch or any other aquatic resources. In total, W216 is approximately 40-50 ft away from the nearest wetland. There is no evidence of subsurface or surface connection between W216 and any other wetland or requisite water. As a result, W216 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W215	1.06	This wetland is surrounded by uplands on all sides. The nearest wetland or continuous surface connection is approximately 640 ft away. There is no evidence of a subsurface or surface connection to any other wetland. As a result, W215 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W213	1.25	This wetland is surrounded by uplands on all sides. The nearest wetland or continuous surface connection is approximately 250 ft away. There is no evidence of a subsurface or surface connection to any other wetland. As a result, W213 is a non-

## SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2013-00561

		jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W210	12.53	The southern boundary of this wetland abuts a roadside ditch. However, this ditch terminates to both the east and west before reaching any other wetland or requisite water. According to LIDAR, there is a potential continuous surface connection to the north of this wetland that would connect W210 to another wetland. During a site visit conducted on October 23, 2024, the Corps walked this area and noted that the small depressional feature heading north out of W210 terminated over 150 ft from the nearest wetland. The depressional feature did not exhibit the three wetland characteristics or show any evidence of flow. W210 was surrounded by uplands and lacked a subsurface or surface connection to any other wetlands or requisite water. As a result, W210 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W209	0.95	According to LIDAR, there is a depressional feature leading to the northeast away from this wetland towards another wetland. During a site visit conducted on October 23, 2024, the Corps walked this area and noted that the small depressional feature heading out of W209 terminated approximately 330 ft away from the nearest wetland. The depressional feature did not exhibit the three wetland characteristics or show evidence of flow. W209 is surrounded by uplands and lacked a subsurface or surface connection to any other wetland or requisite water. As a result, W209 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
W211	2.07	This wetland is surrounded by uplands on all sides. The nearest wetland or continuous surface connection is approximately 580 ft away. W211 lacked any evidence of a subsurface or surface connection to any other wetland. As a result, W211 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
D2	450 LF	D2 is a ditch that was dug in uplands and wetlands. Only the portion that was dug in uplands is under review in this AJD. As observed on the Corps site visit on October 23, 2024, this ditch shows evidence of flow likely only during heavy rain events. This evidence includes minor leaf litter wracking and a narrow, cleared path in the middle of the ditch where water had flown. However, there was no evidence of sustained flow including shelving or channeling consistent with an ordinary high water mark. Additionally, this ditch did not exhibit the three wetland characteristics. D2 is acting as a non-RPW ditch that experiences flow only during heavy rain events. Due to the ditch not exhibiting an OHWM or the three wetland characteristics the ditch is not considered an aquatic resource and is not subject to jurisdictional determination. The ditch is included on the mapping and in this MFR for informational context.
W207	4.49	This wetland is surrounded by uplands on all sides. The nearest wetland or continuous surface connection is approximately 585 ft away. W207 lacks any evidence of a surface or subsurface connection to another wetland. As a result, W207 is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.

SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2013-00561

D1	469.86 LF	D1 is a ditch that was dug in uplands. As observed on the Corps site visit on October 23, 2024, this ditch shows evidence of flow likely only during heavy rain events. This evidence includes minor leaf litter wracking and a narrow, cleared path in the middle of the ditch where water had flown. However, there was no evidence of sustained flow including shelving or channeling consistent with an ordinary high water mark. Additionally, this ditch did not exhibit the three wetland characteristics. D1 is acting as a non-RPW ditch that experiences flow only during heavy rain events. Due to the ditch not exhibiting an OHWM or the three wetland characteristics the ditch is not considered an aquatic resource and is not subject to jurisdictional determination. The ditch is included on the mapping and in this MFR for informational context.
UBP4	0.20	UBP4 is an upland borrow pit that was excavated for the purpose of obtaining fill material and has been abandoned for that purpose. This pit was dug in uplands. The nearest continuous surface connection or wetland is approximately 1,500 ft away from this feature. UBPA lacks any evidence of a surface or subsurface connection to a wetland. As a result, UBPA is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.
UBP3	0.23	UBP3 is an upland borrow pit that was excavated for the purpose of obtaining fill material and has been abandoned for that purpose. This pit was dug in uplands. The nearest continuous surface connection or wetland is approximately 225 ft away. UBPA lacks any evidence of a surface or subsurface connection to a wetland. As a result, UBPA is a non-jurisdictional feature that lacks a continuous surface connection to a Water of the U.S.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Date of Field Review: October 23, 2024
- b. Data sources used to support this determination (included in the administrative record).
  - ☒ Aquatic Resources delineation submitted by, or on behalf of, the requestor: Titled "Figure 10A – ARDR and AJD Wetlands and Other Surface Waters" and dated December 16, 2024
  - ☒ Photographs: Source Corps site visit and dated October 23, 2024
  - ☒ Aerial Imagery: Source Google Earth
  - ☒ LIDAR: Source NOAA, titled "NOAA LIDAR", and dated December 3, 2024
  - ☒ USDA NRCS Soil Survey: Titled "Custom Soil Resource Report" and dated December 3, 2024
  - ☒ USFWS NWI maps: Titled "NWI" and dated December 3, 2024
  - ☒ USGS NHD data/maps: Titled "NHD" and dated December 3, 2024

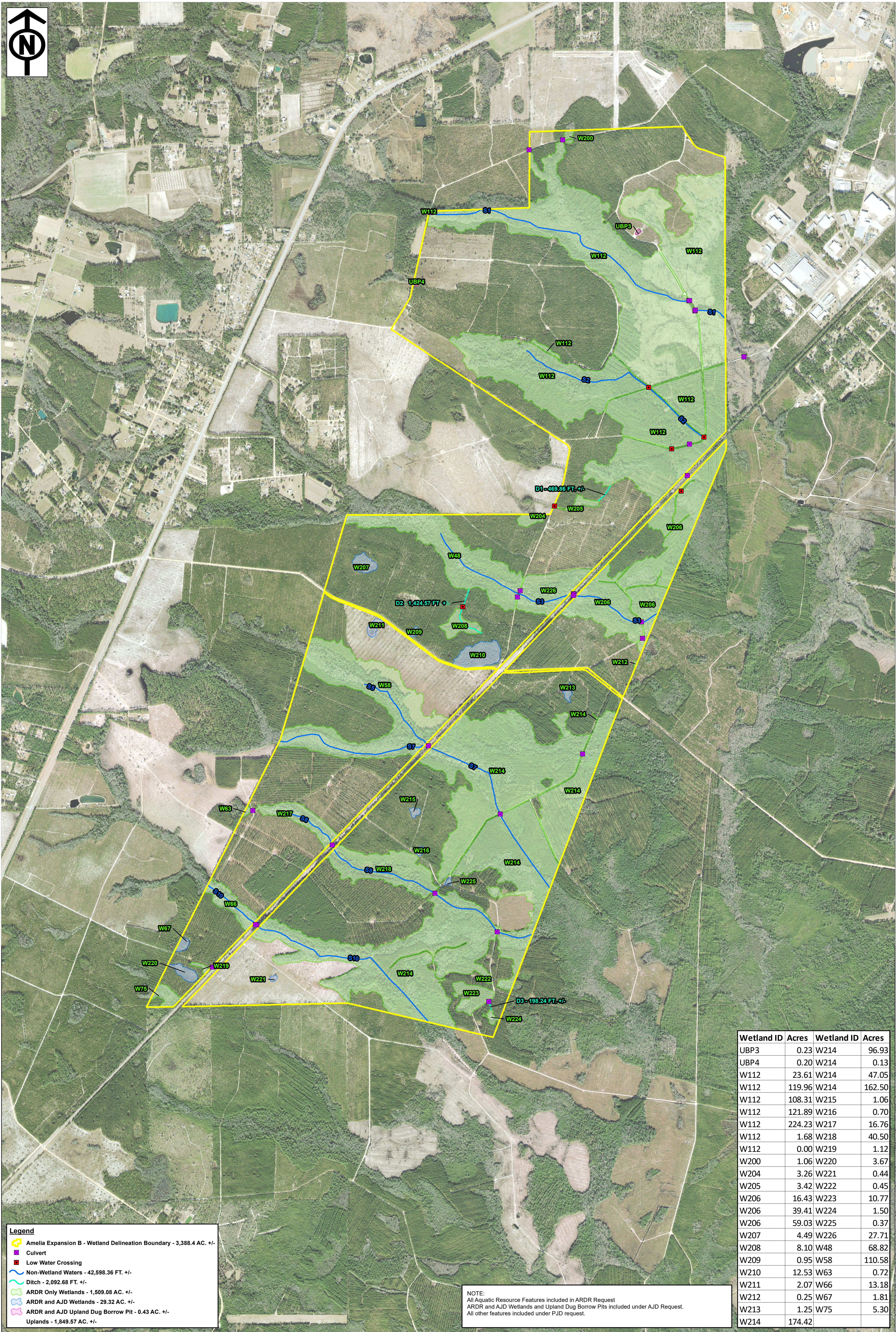
SAS-RD-C

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SAS-2013-00561

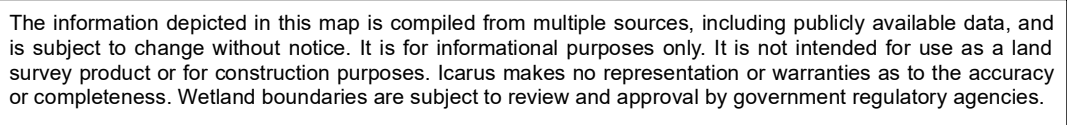
☒ Antecedent Precipitation Tool Analysis: Dated May 23, 2024, and October 23, 2024.

10. OTHER SUPPORTING INFORMATION.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Amelia B Expansion  
County: Wayne  
State: Georgia  
Imagery: 2021 RGBI USGS  
Date: 12/16/2024



Wetland ID	Acres	Wetland ID	Acres
UBP3	0.23	W214	96.93
UBP4	0.20	W214	0.13
W112	23.61	W214	47.05
W112	119.96	W214	162.50
W112	108.31	W215	1.06
W112	121.89	W216	0.70
W112	224.23	W217	16.76
W112	1.68	W218	40.50
W112	0.00	W219	1.12
W200	1.06	W220	3.67
W204	3.26	W221	0.44
W205	3.42	W222	0.45
W206	16.43	W223	10.77
W206	39.41	W224	1.50
W206	59.03	W225	0.37
W207	4.49	W226	27.71
W208	8.10	W48	68.82
W209	0.95	W58	110.58
W210	12.53	W63	0.72
W211	2.07	W66	13.18
W212	0.25	W67	1.81
W213	1.25	W75	5.30
W214	174.42		

NOTE:  
All Aquatic Resource Features included in ARDR Request  
ARDR and AJD Wetlands and Upland Dug Borrow Pits included under AJD Request.  
All other features included under PJD request.